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Viewing cable 07SANJOSE1571, MOVEMENT ON IMPLEMENTATION LEGISLATION UNLIKELY

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Reference ID	Created	Released	Classification	Origin
07SANJOSE1571	2007-08-22 21:31	2011-08-30 01:44	CONFIDENTIAL	Embassy San Jose

Appears in these articles:

<http://www.nacion.com/2011-03-02/Investigacion.aspx>

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C O N F I D E N T I A L SECTION 01 OF 03 SAN JOSE 001571

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DEPARTMENT FOR WHA/CEN, WHA/EPSC AND EEB; PASS TO USTR
AMALITO

E.O. 12958: DECL: 08/22/2017

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SUBJECT: MOVEMENT ON IMPLEMENTATION LEGISLATION UNLIKELY
BEFORE CAFTA REFERENDUM IN OCTOBER

REF: SAN JOSE 830

¶1. (SBU) SUMMARY: The Arias Administration expects little or no action on CAFTA implementing legislation before the October 7 referendum. Pro-CAFTA coalition in-fighting, coupled with stubborn stalling tactics by the PAC-led opposition, have blocked quorums and buried the GOCR's legislative agenda in contentious wrangling. To turn down the political heat (which could have a negative impact on the pro-CAFTA referendum campaign) Minister of the Presidency Arias ordered the implementing bills pulled from this month's extraordinary session of the Asamblea. Action in September, during the next ordinary session, is technically feasible but may be politically impossible, with the referendum just five weeks later. The Arias Administration is counting on a "Si" win on October 7 to re-glue its fractured legislative coalition together and to roll over enough CAFTA opponents to complete all the required legislation by March 1, 2008. This may be a very tall order. Mandatory Supreme Court legislative review, likely final consultations on some issues with USTR, the required annual budget debate in November, and end-year holidays in December all stand between the referendum and implementation. END SUMMARY.

AS CAFTA CAMPAIGN HEATS UP, LEGISLATIVE ACTION COOLS DOWN

¶2. (U) On August 15, Minister Rodrigo Arias made it official. Ending speculation brewing since the start of the August extraordinary session (which is controlled by the Executive), he announced that the GOCR would not act on the 13 pieces of CAFTA-related legislation until the next ordinary session, in September. Citing problems within the government's 38-seat coalition, in particular continued friction with and within the six-member Libertarian bloc, and criticizing the PAC-led opposition for refusing to permit a quorum for any CAFTA-related debate, the Minister said he did not want "to create more chaos" in the Asamblea by forcing action on items that were not "politically viable" at the moment. He also said the GOCR wanted to "allow space" for the referendum to take place.

¶3. (SBU) In response to this GOCR "restraint" before the referendum, Arias called on all parties in the Asamblea to approve the implementing legislation after the referendum, as a reflection of the "popular will," should the "Si" vote win. Opposition leaders applauded the GOCR's "realistic" actions, but declined to make any pre-referendum commitments. In exchange for their promise not to block implementing legislation should the "yes" vote win, PAC has insisted the GOCR agree to take no further action on CAFTA-related legislation, should the "no" side win. The GOCR has declined to make such a deal. This fundamental disagreement, plus tight control by PAC faction leadership, apparently torpedoed quiet GOCR-PAC negotiations on the CAFTA implementing agenda in June and July.

COMEX: LOOK FOR MOVEMENT BEHIND THE SCENES

¶4. (SBU) On August 10, Director General of Foreign Trade Gabriela Castro and Legislative Adviser Nelly Vargas of COMEX told ADCM and Econoff the GOCR feared that placing the implementing legislation on the legislative calendar now might be seen as an attempt to move ahead on CAFTA before the people have had their say on October 7. The public reaction would be negative.

¶5. (SBU) The decision to postpone action is not all bad, according to Castro and Vargas. While the PAC-led opposition was boycotting plenary sessions (and taking full advantage of their "free time" to campaign for the "no" vote in the referendum), legislators in the GOCR's coalition wasted three weeks virtually chained to the Asamblea building, trying to maintain a quorum for the

implementing legislation. Now, pro-CAFTA legislators would also be able to skip sessions to campaign in their home provinces. (NOTE: The pro-CAFTA coalition is exactly two-thirds of the legislature and thus theoretically sufficient to control the agenda, but only if all 38 members are present for every key vote, every day.)

16. (SBU) Castro and Vargas did not completely rule out

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the GOCR reversing course and resuming pre-referendum action on the CAFTA-related bills at some point, if the political risk of doing so were deemed acceptable. They also stressed that not all work on the legislation is stalled. While little/nothing is happening in the public eye, COMEX is continuing its discussions with USTR on each of the bills to ensure that the draft legislation meets Costa Rica's CAFTA obligations. In addition, there are a few regulatory decisions that must be made separate from the legislation, such as which entity will serve as the new telecom regulator. Vargas confirmed that eight of the 13 bills on the GOCR's implementing agenda are posed for action in the Plenary, while the remaining five bills are in committee.

THE LEGISLATURE: TIME IS RUNNING OUT

17. (C) On August 15, PLN faction chief Mayi Antillon confirmed to ADCM that the GOCR will not proceed with CAFTA implementing legislation in August. She also predicted that movement during the regular session in September will be very difficult, unless the Arias Administration can finally discipline the Libertarians (ML). Without their six votes, the GOCR's 38-seat, two-thirds majority is not guaranteed, with the ML "tail" wagging the GOCR "dog".

18. (C) The faction was running in multiple directions, Antillon explained. In early August, former faction head Evita Arguedas began unsanctioned negotiations with PAC party leader Otton Solis. Antillon was adamant that the PLN did not want to grant any legitimacy or stature to Solis by involving him in the implementing legislation. Faction head aspirant Mario Quiros, a purist on legislative procedures, continues to bog down progress by myopic focus on process, according to Antillon. Current faction head Luis Barrantes has been thin-skinned and petulant about the criticism of his faction, she added. Party leader (and 2010 presidential hopeful) Otto Guevara is campaigning for the "Si" vote, but could or would do nothing to rein in his party colleagues, Antillon said.

19. (C) Minister Arias was so angry, according to Antillon, that he summoned Guevara for a series of meetings on August 15 to clear the air. It is time, says Antillon, for the Libertarians (ML) to make up their minds and fall in (or fall out) with the government once and for all on CAFTA. Obviously exasperated, she thought it might be easier to include a few moderate PAC members in a post-referendum working coalition (assuming a "Si" victory) than to continue babysitting the Libertarians.

CAN THEY GET THERE FROM HERE?

110. (SBU) On August 17, veteran Asamblea staffer Edel Reales was pessimistic. With some careful behind-the-scenes pushing, if the Libertarians were on board, the GOCR could use the September session to position all the CAFTA implementing legislation for action as soon as possible after the referendum. In his view, however, this was the absolute best case scenario;

possible, but not probable. Any real action more likely will have to wait until after the referendum, and the few months remaining pose a daunting challenge. Given the likely recesses in September (for the referendum campaign) and December (end-year holidays), the mandatory budget debate in November, the required Supreme Court (Constitutional Chamber) review of all legislation, and the legislative rules which favor the minority (and obstructionists), in Reales, professional opinion, the GOCR will not be able to complete all the implementing legislation by March 1.

¶11. (SBU) Antillon, ever the politician, was less categorical. Implementation will be extremely difficult, in her view, but she is withholding judgment until after the referendum. She and Reales both acknowledged that if Costa Rica did not make the Entry into Force deadline, the GOCR would have to seek an extension from all CAFTA members, not just the USG.

COMMENT

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¶12. (SBU) Tactically, the GOCR,s actions may be understandable. However, Costa Rica is going to be extremely hard-pressed to get all of the legislation passed by March 1 unless more progress is made before October 7. The Asamblea,s historic inability to take decisive action engenders little confidence. With or without the Libertarians, the Arias administration will need a decisive "yes" win in the referendum, a resulting groundswell of public opinion to get CAFTA done, legislator willingness to work together in response to that groundswell, and skillful use of all the legislative tools at its disposal to meet the March 2008 implementation deadline. For Costa Rica, this would be an extraordinary combination of political factors.
Brennan